

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal	)	CC Docket No 02-6
Service Support Mechanism	)	
	)	
	)	

REQUEST OF THE WEST VIRGINIA DEPARTMENT OF EDUCATION  
FOR A WAIVER OF FORM 471 LINE 30, COMMISSION’S RULE 54.504(C)

Pursuant to Section 1.3 of the Commission’s Rules<sup>1</sup>, the West Virginia Department of Education (WVDE) respectfully requests a waiver of the contract certification on the FCC Form 471, Line 30 and the Commission’s rule 54.504(c).

Section 1.3 of Commission’s rules provides that the Commission may waive its rules “if good cause therefore is shown.”<sup>2</sup> Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”<sup>3</sup> A waiver, as explained below, is necessary to ensure that West Virginia schools receive their full eligible E-rate discounts.

The West Virginia Department of Education followed the FCC competitive bidding process and state procurement rules and regulations. The WVDE posted all appropriate Forms 470 with the release of each corresponding state Request for Proposal (RFP). The Forms 470, through the RFP language, indicated the state’s intent to have year-to-year renewals. These renewals can be exercised under E-rate rules without the posting of a new Form 470.

West Virginia state purchasing rules and regulations require that these annual renewals be signed no more than 30 days prior to the expiration of the contract (or last renewal expiration date). Thus, these contracts cannot be renewed until close to the start of the E-rate funding year. In most cases the Form 471 application “window” closes approximately 5 months prior to the renewal of these E-rate eligible contracts.

The E-rate application time line and West Virginia state purchasing contract renewal processes do not align. When West Virginia applicants file a Form 471, using one of these state master contracts, they do not have a signed contract for the funding year for

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<sup>1</sup> 47 C.F.R. §1.3.

<sup>2</sup> 47.C.F.R. §1.3.

<sup>3</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

which they are applying. The Commission's rule 54.504(c) and Line 30 of the Form 471 require that a signed contract be in place prior to filing a Form 471.

In Funding Year 2003, the WVDE was approved for over \$2 million in discounts on internal connections for 207 public schools. Similarly, in Funding Year 2004, the WVDE has requested over \$3 million to benefit over 500 public schools for internal connections requests using state contracts; the 90% requests have been funded at this time for \$727,247.39. For both 2003 and 2004 the WVDE was approved for over \$578,000 in Internet access discounts; these funding discounts benefit all West Virginia public schools.

In addition to the state applications, each county applies for E-rate discounts on a variety of eligible services/products. All of the counties have used state master contracts for discounts on frame relay and/or ATM telecommunications services since the beginning of the E-rate program. These discounts have provided the high-speed telecommunications lines necessary for the nearly 800 schools and 300,000 students and teachers to access online instructional resources and e-mail.

Many of the counties (for some services over half of the counties) have used state master contracts for local voice services, long distance services and/or internal connections products and services. To date West Virginia public schools have received E-rate funding commitments of over \$55 million. We anticipate that the Funding Year 2005 applications will reflect the same level of requests as past years.

A waiver of the contract certification would further the public interest by ensuring that West Virginia applicants receive the full amount of E-rate funding for which they are eligible.

### Conclusion

In order for West Virginia schools to use these year-to-year renewable state master contracts on the Form 471 for Funding Year 2005 and future funding years, the WVDE requests that this certification be waived for West Virginia applicants. Good cause exists for waiving the contract certification to ensure that West Virginia schools receive the full benefit of the E-rate funding. Millions of dollars in discounts, as well as the continuation of some services, are in jeopardy without a wavier of this certification.

Respectively submitted,  
WEST VIRGINIA DEPARTMENT  
OF EDUCATION

By: /s/ David Stewart

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